

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	NO. CR03-5596 RBL
)	
Plaintiff,)	UNITED STATES'
v.)	SENTENCING MEMORANDUM
)	AND MOTION FOR
VINCENT B. GENOVANA,)	DOWNWARD DEPARTURE
)	
Defendant.)	NOTE FOR CONSIDERATION:
)	February 27, 2004

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, Mark Chutkow, Assistant United States Attorney for said District, and James D. Oesterle and Larry Kennedy, Special Assistant United States Attorneys, hereby files its sentencing memorandum and motion for downward departure in the above-captioned matter.

I. FACTUAL BACKGROUND

A. Evidence of Misconduct Aboard the M/S Höegh Minerva

Defendant Vincent B. Genovana has acknowledged his participation in repeated overboard discharges of oil contaminated wastewater from the motor ship ("M/S") Höegh Minerva in violation of international and federal law. More specifically, Genovana admitted that he participated in a scheme to fabricate, install and operate a "magic pipe" to bypass the ship's oil content sensor, a device which operates to prevent the discharge of oil contaminated wastewater with more than fifteen (15) parts per million of oil. Once in place, the magic pipe permitted Genovana to discharge

1 inadequately treated oily waste directly overboard into the ocean.

2 Genovana knew it was unlawful to bypass the oil content sensor. His
3 participation in the illegal bypassing activity was exacerbated by his subsequent efforts
4 to conceal the activity from United States Coast Guard inspectors. Those efforts, as
5 described in the Plea Agreement and the Presentence Report (“PSR”), included
6 falsifying documents, hiding the magic pipe, altering pipe fittings, and instructing
7 fellow crew members to obstruct inspectors.

8 **B. Evidence of Misconduct on Other Voyages or Other HFS Vessels¹**

9 Genovana’s misconduct aboard the M/S Höegh Minerva was not an isolated or
10 anomalous event. To the contrary, he was continuing a practice of illegal discharging
11 and deception that had been a pattern and practice on the Höegh Minerva, as well as
12 other vessels operated by his employer, Höegh Fleet Services, A/S (“HFS”).²
13 Genovana acknowledged that illegal discharges occurred on at least four other HFS
14 vessels on which he served: (1) the M/S Hual Trubadour (from at least June 2002 to
15 February 2003); (2) the M/S Hual Tricorn (from at least December 2001 to
16 April 2002); (3) the M/S Hual Trapper (from at least October to November 2001); and
17 (4) the M/S Hual Tracer (from at least May to August 2001).³ According to Genovana,
18 the discharges were prompted, in large part, by faulty pollution control equipment, as
19

20 ¹ The government is not seeking to hold Genovana responsible for his role in previous
21 discharging activity about which the government learned during interviews with Genovana.
22 The government will briefly discuss other criminal conduct, not for the purpose of increasing
23 Genovana’s guidelines range, but for the limited purpose of providing information to the
Court for its use in determining whether, and to what extent, a downward departure is
warranted pursuant to the government’s motion under USSG § 5K1.1.

24 ² During the government’s investigation, it uncovered evidence that Genovana’s
25 predecessors, second engineers Junileo Gautier and Ronald Macaraeg, had also bypassed the
26 Höegh Minerva’s oil water separator in order to discharge untreated oily bilge water
overboard.

27 ³ In addition, the government has obtained evidence that from at least May 2002 to
28 March 2003, senior officers on the M/S Höegh Merit, an HFS operated vessel, including
second engineers Rodolfo Acosta, Jerry Velasco and Mario Echarri, participated in the illegal
discharge of oily bilge water at night on the high seas, then concealed the bypassing
equipment before reaching port.

1 well as the presence of tank cleaner and oil spill dispersant in the bilge water which,
2 among other things, emulsified the oil, preventing the OWS from properly separating
3 out oil from water. Genovana acknowledged that none of the illegal discharges were
4 recorded in the vessels' Oil Record Books.

5 **II. PLEA AGREEMENT**

6 Pursuant to a Plea Agreement, Genovana pled guilty to Count 1 of an
7 Information, charging Genovana with knowingly concealing, covering up, falsifying
8 and making a false entry in a record, document and tangible object, with the intent to
9 impede, obstruct and influence the investigation and proper administration of a matter
10 within the jurisdiction of the United States Department of Homeland Security, and in
11 relation and contemplation of such a matter, namely a United States Coast Guard
12 MARPOL inspection of the M/S Höegh Minerva, in violation of Title 18, United States
13 Code, Sections 2 and 1519.

14 **III. PRESENTENCE REPORT**

15 **A. The Offense Conduct Section.** The PSR accurately describes the offense
16 conduct in this case.

17 **B. Base Offense Level.** The United States concurs with the U.S. Probation
18 Office's ("USPO's") analysis of the appropriate base offense level. The base offense
19 level for a violation of 18 U.S.C. § 1519 is found at USSG § 2J1.2. Pursuant to the
20 version of section 2J1.2 in effect in September 2003, the appropriate base offense level
21 for Genovana's offense under the Guidelines is twelve (12).

22 **C. Specific Offense Characteristics.** The Government agrees with the
23 USPO's assessment that no specific offense characteristic applied to Genovana's
24 conduct in September 2003. *See* USSG § 2J1.2.

25 **D. Adjustment for Role in the Offense.** The Government disagrees with
26 the USPO that there are no adjustment's for Genovana's role in the offense. There
27 should be a two (2) level increase of Genovana's offense level pursuant to
28 USSG § 3B1.1(c) because Genovana supervised less than five engine room crew

1 members in the course of engaging in the illegal conduct. In addition, Genovana's
2 offense level should be increased by two (2) additional levels pursuant to
3 USSG § 3B1.3 because Genovana abused his position of trust to facilitate significantly
4 the commission of the offense. As second engineer, Genovana was in charge of the
5 day-to-day operation of the engine room and had supervisory authority over the three
6 engine room crew members who assisted him the concealment of the illegal discharging
7 activity. In addition, a young engine cadet, Mario DeGuzman, indicated that he
8 engaged in the illegal conduct, in part, because he was afraid of Genovana.

9 **E. Adjustment for Acceptance of Responsibility.** Should the Court concur
10 with the government's Guidelines calculations, then the government requests that the
11 Court decrease Genovana's offense level by three (3) levels pursuant to USSG § 3E1.1
12 because Genovana has assisted the government in its investigation and prosecution of
13 Genovana's conduct by timely notifying the government of his intention to enter a plea
14 of guilty, thereby permitting the government to avoid preparing for trial.

15 **F. Total Offense Level.** The United States submits that Genovana's total
16 offense level is thirteen (13), with a range of imprisonment of twelve (12) to eighteen
17 (18) months.

18 **III. SUBSTANTIAL ASSISTANCE DEPARTURE**

19 The United States hereby files a motion requesting that the Court depart
20 downward from Genovana's applicable guideline range pursuant to United States
21 Sentencing Guideline § 5K1.1, due to the substantial assistance Genovana has provided
22 to the United States.

23 **A. Significance and Usefulness of Defendant's Assistance**

24 Genovana agreed to plead guilty to obstruction shortly after the government
25 discovered the illegal discharge activity onboard the ship. After pleading guilty,
26 Genovana agreed to participate in a number of interviews with government inspectors,
27 detailing not only his misconduct, but the misconduct of other engineers employed by
28 HFS. Using his substantial engineering knowledge, Genovana explain the difficulties

1 he and other engineers faced in using HFS's pollution control equipment, as well as the
2 sophisticated ways in which Genovana and other engineers circumvented the
3 equipment.

4 Evidence obtained from Genovana was instrumental in developing a case against
5 his employer, HFS. The government recently reached an early resolution in principle
6 with HFS, which might not have been possible without the detailed evidence provided
7 by Genovana. Among other things, this evidence established that HFS's employees
8 were engaged in a pattern and practice of illegal discharging activity, which they
9 covered up from U.S. inspectors.

10 **B. Truthfulness, Completeness, and Reliability of Information**

11 The United States has no basis for questioning the truthfulness of the information
12 provided by Genovana. Fellow crew members aboard the M/S Höegh Minerva have
13 corroborated Genovana's statements. In addition, Genovana volunteered information
14 that was not previously known by the United States and would likely not have been
15 discovered absent Genovana's cooperation.

16 **C. Nature and Extent of Assistance**

17 As noted above, Genovana provided government investigators and counsel a
18 thorough interview that covered his activities while onboard HFS ships. No
19 information was withheld. Genovana provided information regarding defendant HFS's
20 knowledge of the discharge activities. That information assisted the United States in
21 negotiating a plea agreement with HFS.

22 **D. Risk of Injury Resulting From Assistance**

23 The United States is presently unaware that Genovana is, or was, exposed to any
24 risk of physical injury as a result of his assistance in the investigation of illegal
25 discharge practices aboard the M/S Höegh Minerva. It is apparent, however, that
26 Genovana will likely suffer economic injury as a result of his decision to cooperate with
27 this investigation. Genovana's ability to continue working as a crew member onboard
28 marine vessels may well be severely restricted, if not eliminated. There is a strong

1 possibility that foreign based manning agencies responsible for staffing foreign flagged
2 marine vessels will not place a crew member who has cooperated with United States'
3 law enforcement authorities, particularly when that cooperation has led to prosecution
4 of a vessel management company.

5 **E. Timeliness of Assistance**

6 Genovana agreed to provide information not long after the United States'
7 discovered evidence that crew members onboard the M/S Höegh Minerva were illegally
8 discharging oily wastewater and sludge. The assistance was provided in sufficient time
9 to allow the United States to use that information in questioning others.

10 The significance of Genovana's decision to cooperate early in the investigation
11 cannot be overstated. The United States' ability to fully investigate and prosecute
12 marine vessel discharge cases such as the one before this Court is dependent in large
13 part on the willingness of crew members to disclose the activity. An overwhelming
14 majority of marine vessels visiting United States' ports are manned by foreign crews.
15 Individual crew members seldom remain on one vessel for more than several months.
16 Consequently, it is difficult for federal investigators to contact crew members and
17 develop evidence. Furthermore, it is very easy for vessel operators to simply release
18 or transfer a crew member, thereby effectively preventing investigators from obtaining
19 information.

20 For the foregoing reasons, the United States respectfully requests that the Court
21 exercise its discretion and grant the government's motion to depart downward from the
22 total offense level. The United States requests that the Court depart downward from
23 the total offense level from thirteen (13) to eight (8), resulting in a range of
24 imprisonment of zero (0) to six (6) months.

25 **IV. SENTENCING RECOMMENDATION**

26 The United States recommends that Genovana be sentenced to a thirty (30) day
27 term of imprisonment. This recommendation, if accepted by the Court, would impose
28 a sentence that serves the dual functions of punishing Genovana and serving as a

1 general deterrent to similarly situated vessel crew members charged with handling
2 waste oil.

3 Marine vessel inspectors with the United States Coast Guard and the State of
4 Washington have experienced a sharp increase in the number of marine vessels that are
5 bypassing required pollution prevention equipment and apparently discharging waste oil
6 directly overboard into the ocean. This is the fourth case in the last two years in which
7 a ship engineer has been prosecuted for the same discharge activity. *See United States*
8 *v. Oh*, No. 02-5646FDB (W.D. Wash. (Tacoma)); *United States v. Jeong*, No. 02-
9 6064(JET)RBL (W.D. Wash. (Tacoma)); and *United States v. Wang Ki*, No. CR03-
10 5171JET (W.D. Wash. (Tacoma)). While each of the engineers in these cases
11 participated in activities that led to the falsification of records that concealed the illegal
12 discharges, defendant Genovana's decision to cooperate with federal investigators
13 distinguishes this case from most of these cases for purposes of imposing a sentence.

14 The apparent widespread illegal dumping activity generally occurs at night under
15 the cover of darkness to avoid detection. Engine room crew members are ordered to
16 discharge when the vessel is on the high seas, far from any port. These same crew
17 members are then ordered to thoroughly clean any residual oil from discharge valves
18 and hide discharge hoses to conceal the illegal dumping from port inspectors. Taken
19 together, this conduct makes it very difficult for inspectors to discover the illegal
20 activity, and perhaps more importantly, federal prosecutors to successfully prosecute
21 crew members and companies that profit from the practice.

22 As noted in the United States' motion for a substantial assistance departure,
23 above, Genovana provided timely and thorough information about the illegal discharges
24 not long after the marine inspectors discovered evidence that the pollution prevention
25 equipment had been bypassed. Moreover, Genovana jeopardized his career by
26 disclosing conduct aboard other HFS vessels that may not have been fully discovered
27 absent his cooperation.

28 Genovana's decision to step forward and admit the illegal discharges should

1 serve as an example to similarly situated engineers who are faced with the choice of
2 whether to cooperate with marine investigators and disclose the conduct or continue to
3 use false and fraudulent records to conceal the dumping. The United States' ability to
4 use Genovana's decision to motivate others to cooperate is dependent on this Court's
5 decision to impose a sentence that rewards the decision. For this reason, the United
6 States requests that Genovana be sentenced to serve a thirty (30) day term of
7 imprisonment.

8 In summary, imposing a thirty (30) day sentence would both punish this
9 defendant and provide an incentive for other vessel crew members faced with a decision
10 of whether to continue concealing illegal dumping activity or cooperate.

11 DATED this 23rd day of February, 2004.

12 Respectfully submitted,

13 JOHN McKAY
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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2004 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/ Jacqueline Masonic
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